



Follow-up Review of Liberty County's Indigent Defense Systems

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Background

In November 2014, the Texas Indigent Defense Commission (TIDC) received a complaint alleging that a felony defendant was not asked whether he would like to request counsel at a Liberty County Article 15.17 hearing. After TIDC reviewed a sample of Liberty County magistration forms, Texas Judicial County Monthly Court Activity Reports, and TIDC appointment data, it decided to conduct a limited scope review of local indigent defense practices.

The February 2015 review focused on (1) local procedures for conducting Article 15.17 hearings and (2) local procedures for ruling on requests for counsel. In April 2015, TIDC issued its initial policy monitoring report, which made three recommendations:

1. Update the City of Cleveland's 15.17 forms to state whether the individual is requesting counsel for offenses with a Class B misdemeanor grade and higher.
2. At the 15.17 hearing, for Class B misdemeanors and above, ask all arrestees whether they want to request counsel; record each arrestee's response; and assist arrestees in completing the necessary paperwork to determine indigence.
3. Report the number of persons requesting counsel to the Office of Court Administration to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

Liberty County responded to each of these recommendations and provided TIDC updated Magistrate's Warning forms for the City of Cleveland and Liberty County.

Follow-up Review

TIDC's policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.¹ Staff members Joel Lieurance and Claire Buetow conducted the follow-up review with visits to Liberty County on October 31 and November 3, 2018. The purpose of this review was to examine whether Liberty County successfully addressed the findings and recommendations from the April 2015 report. TIDC reviewed magistration forms; observed magistration in the City of Cleveland and Liberty County Jail; and reviewed Texas Judicial County Monthly Court Activity Reports.

¹ 1 TEX. ADMIN. CODE § 174.28(d)(3).

Program Assessment

The current review focuses on three recommendations related to two core requirements of the Fair Defense Act.²

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.³ At this hearing, the magistrate must inform the accused of his or her right to counsel; inform the accused of the procedures for requesting counsel; and ensure the accused has reasonable assistance in completing the necessary forms for requesting assistance of counsel.⁴ Finally, within 24 hours of receiving a request for counsel, the magistrate must transmit this request to the entity authorized to appoint counsel.⁵

Arrestees in Liberty County receive magistrate warnings either at the Cleveland Municipal Court or the Liberty County Jail. In its 2015 review, TIDC found that the City's magistrate warning forms did not include a space to mark requests. In its current review, TIDC found that both the City's and the County's forms now include a space to mark requests, successfully addressing this recommendation.

Recommendation 1: The City of Cleveland must update its Article 15.17 magistrate form to comply with Article 15.17(e). The new form must state whether the individual is requesting counsel (for offenses with a Class B misdemeanor grade and higher).

Successfully Addressed.

In its 2015 review, TIDC found that arrestees who receive Article 15.17 warnings in the Liberty County Jail were generally not afforded an opportunity to request counsel. TIDC observed magistrate warnings during which the Justice of the Peace for Precinct 1 informed arrestees of their right to counsel, but did not ask whether they wanted to request counsel. The magistrate marked "No" on each arrestee's form in the space for indicating whether they had requested counsel.

In its current review, TIDC found that arrestees at the Liberty County Jail are now given an opportunity to request counsel and these requests are marked on magistration forms. TIDC observed two magsitrate warnings at the jail, given by Justices of the Peace for Precincts 1 (JP1) and 6 (JP6). Each magistrate gave warnings to arrestees as a group and asked whether anyone wanted to request

² 1 TEX. ADMIN. CODE § 174.28(e).

³ TEX. CODE CRIM. PROC. art. 15.17(a).

⁴ TEX. CODE CRIM. PROC. art. 15.17(a).

⁵ TEX. CODE CRIM. PROC. art. 15.17(a).

counsel. Each arrestee then spoke to the magistrate individually to learn about their charges and bond amount. The magistrates asked arrestees individually whether they wanted to request counsel. The magistrates marked on their forms whether the arrestees requested counsel and asked arrestees to sign to indicate that they understood their rights.

One arrestee before JP1 and four arrestees before JP6 requested counsel. In each case, the magistrate directed them to complete an indigency application with jail staff. The arrestee then returned to the magistrate, who reviewed the application and took a sworn affidavit that it was true. These procedures successfully address TIDC's recommendation.⁶

Recommendation 2: For offenses with a Class B misdemeanor grade and higher, the magistrate must inform arrestees of the procedure for requesting counsel, ask all arrestees whether they want to request counsel, and record each individual's response. The magistrate must then ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence.

Successfully Addressed.

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE.

Magistrates must report to the Office of Court Administration the number of individuals who request counsel at Article 15.17 hearings.⁷ In its 2015 review, TIDC found that for Fiscal Year 2014 (October 2013-September 2014), Liberty County justices of the peace reported fifteen magistrate warnings and zero requests for counsel and the Cleveland Municipal Court reported zero magistrate warnings and zero requests for counsel.

In its current review, TIDC found that for Fiscal Year 2017 (October 2016-September 2017), Liberty County reported 2,263 magistrate warnings and 99 requests for counsel.⁸ JP1 and JP2 reported both warnings and requests; JP6, however, recorded warnings but no requests. TIDC observed JP6 taking requests during the Article 15.17 hearing, indicating that the magistrate may not be submitting complete court activity reports.

⁶ One defendant before JP6 did not speak English and the magistrate had difficulty connecting to an interpreter to explain her rights. TIDC suggests exploring OCA's Texas Court Remote Interpreter Service (TCIRS) for language issues that arise in the future: <http://www.txcourts.gov/tcris/>.

⁷ 1 TEX. ADMIN. CODE § 171.7 – 8.

⁸ Data available from the OCA Court Activity database at <https://card.txcourts.gov/>.

Table 1: Texas Judicial Council Monthly Justice Court Activity Reports for Liberty County (Oct. 2016 – Sept. 2017)

Court	Misd. Requests	Misd. Warnings	Misd. Req. Rate	Felony Requests	Felony Warnings	Fel. Req. Rate
JP1	29	1040	3%	42	954	4%
JP2	0	0	--	0	0	--
JP3	5	57	9%	23	82	28%
JP4	0	0	--	0	0	--
JP5	0	0	--	0	0	--
JP6	0	69	0%	0	61	0%
Total	34	1166	8%	65	1097	6%

For the same period in FY2017, the City of Cleveland reported 322 magistrate warnings and 0 requests for counsel (see Table 2).

Table 2: Texas Judicial Council Monthly Justice Court Activity Reports for City of Cleveland (Oct. 2016 – Sept. 2017)

	Misd. Requests	Misd. Warnings	Misd. Req. Rate	Felony Requests	Felony Warnings	Fel. Req. Rate
Total	0	192	0%	0	130	0%

TIDC spoke to the City of Cleveland Municipal Court Clerk about this report, and she indicated that she would file these reports going forward. For the month of November 2018,⁹ TIDC found the City of Cleveland Municipal Court had reported counsel requests made at the Article 15.17 hearing (see Table 3).

Table 3: Texas Judicial Council Monthly Justice Court Activity Reports for City of Cleveland (Nov. 2018)

	Misd. Requests	Misd. Warnings	Misd. Req. Rate	Felony Requests	Felony Warnings	Fel. Req. Rate
Total	14	18	78%	5	5	100%

TIDC will continue to monitor Judicial Council Monthly Court Activity Reports until all magistrates who conduct Article 15.17 hearings successfully report requests for counsel.

Recommendation 3: Justices of the peace and municipal courts must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

Issue Pending. All justices of the peace and municipal court judges who give magistrate warnings must record requests for counsel and submit these data to OCA.

⁹ TIDC checked the reports for JP6 (the other magistrate who reported warnings but no requests) to verify current practice. November 2018 data was not yet available for JP6.

Conclusion

TIDC thanks Liberty County officials for their assistance during its visits and commends them for their commitment to improving local indigent defense practices. Liberty County has satisfied two of three of TIDC's recommendations. TIDC will continue to monitor whether the County has satisfied its final recommendation: reporting number of persons requesting counsel to OCA. TIDC is available for technical assistance; please contact Joel Lieurance, Senior Policy Monitor, with questions.

Status of Recommendations

Recommendation 1: The City of Cleveland must update its Article 15.17 magistrate form to comply with Article 15.17(e). The new form must state whether the individual is requesting counsel (for offenses with a Class B misdemeanor grade and higher). *Successfully Addressed.*

Recommendation 2: For offenses with a Class B misdemeanor grade and higher, the magistrate must inform arrestees of the procedure for requesting counsel, ask all arrestees whether they want to request counsel, and record each individual's response. The magistrate must then ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence. *Successfully Addressed.*

Recommendation 3: Justices of the peace and municipal courts must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports. *Issue Pending.*